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8 NOT FOR CITATION

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 JOHNNY PLACENCIA,) No. C 08-0288 JF (PR)
13 Petitioner,) ORDER OF DISMISSAL
14 vs.)
15 BEN CURRY, Warden,)
16 Respondent.)
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18 Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The Court orders
20 Respondent to show cause as to why the petition should not be granted.

21 **BACKGROUND**

22 Petitioner was found guilty by prison officials at the Correctional Training Facility
23 (“CTF”) of participating in a riot, was placed in administrative segregation and suffered a
24 forfeiture of good times credits. Petitioner challenges the finding of guilt in the instant
25 petition. He exhausted his administrative remedies. Thereafter, he filed a petition for a
26 writ of habeas corpus in the Monterey County Superior Court, which was denied in a
27 reasoned decision. His appeal of that decision and subsequent habeas petitions in the
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1 state appellate and supreme courts were denied.

2 DISCUSSION

3 A. Standard of Review

4 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
 5 in custody pursuant to the judgment of a state court only on the ground that he is in
 6 custody in violation of the Constitution or laws or treaties of the United States.” 28
 7 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

8 A district court shall “award the writ or issue an order directing the respondent to
 9 show cause why the writ should not be granted, unless it appears from the application that
 10 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

11 B. Petitioner’s Claims

12 As grounds for federal habeas relief, Petitioner claims that his right to due process
 13 was violated because there was insufficient evidence to support the finding that he was
 14 guilty of participating in the riot.

15 Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a
 16 district court may grant a petition challenging a state conviction or sentence on the basis
 17 of a claim that was reviewed on the merits in state court only if the state court’s
 18 adjudication of the claim “resulted in a decision that was contrary to, or involved an
 19 unreasonable application of, clearly established Federal law, as determined by the
 20 Supreme Court of the United States. 28 U.S.C. § 2254(d)(1). Under the ‘contrary to’
 21 clause of 28 U.S.C. § 2254(d)(1), this Court may grant a writ if the “state court arrives at
 22 a conclusion opposite to that reached by this Court on a question of law or if the state
 23 court decides a case differently than this Court has on a set of materially indistinguishable
 24 facts.” Williams (Terry) v. Taylor, 529 U.S. 362, 413 (2000). “Under the ‘unreasonable
 25 application’ clause, a federal habeas court may grant the writ if the state court identifies
 26 the correct governing legal principle from [the Supreme] Court’s decisions but
 27 unreasonably applies that principle to the facts of the prisoner’s case.” Id. at 412-13.

1 The superior court,¹ citing Superintendent v. Hill, 472 U.S. 445, 454 (1985),
 2 denied Petitioner's due process claim because there was some evidence in the record to
 3 support the disciplinary decision reached by prison officials. (Petition, Ex. A.) Petitioner
 4 argues that the superior court's decision was contrary to or an unreasonable application of
 5 federal law under § 2254(d)(1) because there had to be a "preponderance of the evidence"
 6 of his guilt. Petitioner is incorrect. The superior court identified the correct standard
 7 under due process; due process only requires that there be "some evidence" from which
 8 the conclusion of the administrative tribunal could be deduced. See id. at 455;
 9 Burnsworth v. Gunderson, 179 F.3d 771, 773-74 (9th Cir. 1999). Consequently, the
 10 superior court's decision was not "contrary to" federal law under § 2254(d)(1).

11 Petitioner further argues that the disciplinary decision was based on insufficient
 12 evidence because it was based on the lies of a confidential informant. This confidential
 13 informant had previously been found to be reliable by prison officials, however, and he
 14 testified to seeing Petitioner cutting the facial area of another inmate during the riot.
 15 Moreover, as described by the superior court, the disciplinary decision was also based on
 16 the testimony of prison officials and Petitioner's own statement. This evidence is
 17 sufficient to meet the minimal due process requirement that there be "any evidence in the
 18 record that could support the conclusion reached by the disciplinary board." See Hill, 471
 19 U.S. at 456. Although Petitioner believes that the confidential informant's testimony was
 20 false, prison officials could credit his testimony, as well as the statements, to find that
 21 Petitioner was guilty of participating in the riot. Consequently, the state court could
 22 reasonably conclude that there was some evidence to support the finding of guilt, and
 23 their decision was not an "unreasonable application" of federal law under § 2254(d)(1).

24 As it is clear from the petition that the state court's denial of Petitioner's claim was
 25 neither contrary to nor an unreasonable application of federal law, and consequently that

27 ¹As the state appellate and supreme court decisions were summary, this Court "looks
 28 through" them to the superior court's decision, the last reasoned state court decision addressing
 Petitioner's claim. See Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991); Barker v. Fleming,
 423 F.3d 1085, 1091-92 (9th Cir. 2005).

1 Petitioner is not entitled to habeas relief, the petition will be dismissed.

2 **CONCLUSION**

3 For the foregoing reasons, the petition for a writ of habeas corpus is DISMISSED.

4 The Clerk shall close the file and enter judgment.

5 **IT IS SO ORDERED.**

6 DATED: 5/8/08



JEREMY FOGEL
United States District Judge

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